

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

R.M.S. TITANIC, INC.,
SUCCESSOR IN INTEREST TO
TITANIC VENTURES, LIMITED
PARTNERSHIP,

Plaintiff,

v.

THE WRECKED AND ABANDONED
VESSEL, ETC.,

Defendant.

CIVIL ACTION NO.
2:93cv902

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

May 3, 2018

BEFORE: THE HONORABLE REBECCA BEACH SMITH
Chief United States District Judge

APPEARANCES:

KALEO LEGAL
By: Brian A. Wainger
And
McGUIRE WOODS LLP
By: Robert W. McFarland
Counsel for R.M.S. Titanic

1 APPEARANCES CONTINUED:
2

3 UNITED STATES ATTORNEY'S OFFICE

4 By: Kent Porter

5 Assistant United States Attorney

6 Counsel for Amicus United States

7 THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

8 By: Jackie Rolleri

9 And

10 DEPARTMENT OF JUSTICE

11 By: Matt Troy

12 Counsel for NOAA
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1 THE CLERK: In case 2:93cv902, R.M.S. Titanic,
2 Inc., et cetera, versus The Wrecked and Abandoned Vessel, et
3 cetera.

4 Mr. McFarland, Mr. Wainger, is the plaintiff ready
5 to proceed?

6 MR. McFARLAND: Good morning, Your Honor. Yes, the
7 plaintiff is ready.

8 THE COURT: Good morning, Mr. McFarland.

9 MR. WAINGER: Good morning, Your Honor.

10 THE COURT: Good morning, Mr. Wainger.

11 THE CLERK: Mr. Porter, is the Amicus, United
12 States of America, ready to proceed?

13 MR. PORTER: We are, Your Honor. Good morning. I
14 just want to introduce, in case you don't remember, Jackie
15 Roller.

16 THE COURT: I do remember her.

17 MR. PORTER: Office of General Counsel of NOAA.
18 She has been here before as my primary agent and contact.
19 Matthew Troy is with the civil division at the Department of
20 Justice. He has been handling the bankruptcy proceedings in
21 Florida on behalf of Commerce and NOAA. He graciously
22 volunteered to come down here to address any questions the
23 Court may have as to that particular proceeding. And then
24 lastly Dave Alberg from the Monitor National Marine
25 Sanctuary is here as well, and he has been here before, too.

1 THE COURT: Nice to see you again, Mr. Alberg and
2 Ms. Roller. It's nice to have you, Mr. Troy.

3 Counsel, I have reviewed all of the status reports
4 that had been prepared, and I thought that it was time for
5 us to convene, as we do periodically, so that the Court
6 could be updated on the various issues.

7 The four issues that I have for update are: The
8 status of the bankruptcy proceedings, and I have some
9 questions about that, but I will listen to any presentation
10 you have first; the second is the Ocean Gate expedition and
11 the status of that and if any action needs to be taken by
12 the Court in respect thereto; the third is the status of the
13 artifacts that have been retained and, I believe, pledged as
14 collateral by a G. Michael Harris, who was an officer and
15 director of R.M.S.T.; and, finally, the status of any
16 projected or planned 2018 Titanic expeditions on behalf of
17 R.M.S.T.

18 Those are the four areas that I have to be
19 addressed. I am open, obviously, to any others that you
20 feel the Court needs to be apprised of and/or any issues
21 that you think the Court needs to address outside of these
22 matters that I've raised. So perhaps the easiest way to
23 proceed, does anyone want to make any type of opening
24 statement or should we just get right into the issues?

25 MR. McFARLAND: Your Honor, good morning. Robert

1 McFarland. Let me introduce Jessica Sanders who is the
2 corporate secretary has been before the Court before.

3 THE COURT: Nice to see you, Ms. Sanders.

4 Then why don't we proceed into the status of the
5 bankruptcy proceedings. Are you handling those on behalf of
6 R.M.S.T.?

7 MR. McFARLAND: At least in certain measure, Your
8 Honor, and if certain questions are beyond my ken, then
9 Mr. Wainger can address those.

10 THE COURT: If you would address that, and then
11 I'll hear from Mr. Troy, and we'll go from there.

12 MR. McFARLAND: Thank you, Your Honor. When we
13 were last here on June 28th, the company had filed, in the
14 Chapter 11 proceedings, a motion for planned support
15 agreement and a notice of sale. We were seeking the
16 bankruptcy court's approval for a plan that they had which
17 would have permitted them to come out of the Chapter 11
18 reorganization.

19 That plan was approved by the bankruptcy court on
20 September 6th of 2017. The plan at that time for the
21 company was to proceed with a bidding and auction process
22 and proceed that way. There were certain objections that
23 were voiced to the process that the company proposed for the
24 auction.

25 The company studied the objections, looked at the

1 timing, and withdrew the notice of sale on December 15th of
2 last year. Since then, the company continues to seek the
3 best possible way to emerge from the Chapter 11 proceedings
4 that will satisfy the interest of the creditors, the
5 company, and shareholders, to the extent possible.

6 In that sense, Your Honor, there was a two-day
7 court directed mediation that occurred on February 26th and
8 February 27th of this year with all interested parties
9 convened, and that included representatives of the equity
10 committee, the creditors committee, NOAA was a participant
11 in that, I believe Ms. Roller was there, and there were two
12 days' worth of cordial and detailed discussions with a
13 professional mediator.

14 At the end of the two days, there was not a
15 resolution that was reached. The mediator filed his report
16 with the Court, but he also did not declare an impasse so
17 that it is possible that the parties may engage in future
18 discussions going forward.

19 From that, Your Honor, that brings us from the end
20 of February to now, beginning of May. The company continues
21 to look at what can be done to emerge from this bankruptcy
22 proceeding, including entertaining if there are offers for
23 the sale of the assets or the sale of the stock.

24 THE COURT: Well, what are you seeking? In other
25 words, if I ask you, what's your end goal, what are you

1 seeking? If I said, Mr. McFarland, number one, what are you
2 seeking, what would be the optimal outcome that you would
3 seek for the parties that you represent, and what do you
4 think is the outcome that you might be able to get?

5 MR. McFARLAND: I wouldn't want to speculate too
6 much, Your Honor, on the outcome that we might get, but I
7 think, if we could, what we would like is a solution whereby
8 there was a cash infusion into the company that would enable
9 us to take care of the obligations that are there in return
10 for either sale of stock, in which someone would become a
11 shareholder, large shareholder in the company, or it is
12 possible that there could be an asset sale, which, depending
13 on the assets that were sold, might involve, obviously, not
14 only the bankruptcy court's approval but this Court's
15 approval if there was implicated the covenants and
16 conditions. But the company wants to keep going. It's a
17 Chapter 11. They want to be a going concern. They need
18 some further financing to make that happen.

19 THE COURT: Well, obviously, as you've indicated in
20 your filings, and as the Court would be aware, this has got
21 to be a financial drain whenever you are in any type of
22 extended litigation, and these bankruptcy proceedings have
23 certainly been extended litigation. That is a continued
24 financial drain on the company.

25 MR. McFARLAND: It is, Your Honor. I'm not

1 divulging any strategy or work product. When the objections
2 came in to the notice of sale last year, at the end of last
3 year, that was something the company had to consider, was,
4 if we want to proceed in this fashion, before we ever get to
5 a sale process and see what happens with bidders and
6 stalking horse bidder and that aspect, we are going to be
7 litigating just can we do this? And Your Honor is directly
8 right, it has been a more involved, contentious, in some
9 respects, bankruptcy proceeding than would have been ideal
10 from the company's standpoint, and we are very cognizant of
11 the costs. That's why we would like to emerge as quickly as
12 possible.

13 THE COURT: All right. Thank you. Anything else
14 you want to add, Mr. Wainger?

15 MR. WAINGER: Not at this time, Your Honor.

16 THE COURT: All right.

17 Mr. Porter, Ms. Rolleri or Mr. Troy, all of you,
18 who wants to speak first?

19 MR. PORTER: I'll address a few questions first,
20 Your Honor. As to the bankruptcy and the possibility that
21 there is a transfer of the assets, following the planned
22 support agreement that was filed back in the fall, we've had
23 several conversations with Mr. Wainger about trying to plan
24 for a transfer of the artifacts or a transfer of the
25 company, and to that end, in December we provided a letter

1 to Mr. McFarland, Mr. Wainger outlining the various
2 conversations that NOAA would want to evaluate for purposes
3 of, like, transfer of the artifacts or some sort of transfer
4 of the salvor-in-possession status. I would be happy to
5 share a copy of that letter with the Court, if you'd like.

6 THE COURT: I would like a copy of that letter,
7 please.

8 MR. PORTER: If there happened to be a transfer, a
9 stock sale, it would be a little different because under the
10 covenants. We'd simply need to make sure that the
11 management conservation and curation of the artifacts
12 remained stable as they were, and that could be the case if
13 all of the same personnel stayed in place. But that's just
14 to let you know that we are planning for this possibility of
15 an artifact sale or an artifact transfer and trying to be in
16 the best position to evaluate this as quickly as possible to
17 be able to advise the Court of what NOAA's position is on
18 that.

19 THE COURT: If there is any, wasn't it called the
20 complete sale plan? Is that what they were calling it?

21 MR. PORTER: I believe that may have been the term.

22 THE COURT: I know there's a planned support
23 agreement.

24 MR. PORTER: Yes.

25 THE COURT: But then they were talking at some

1 point about if they have a complete sale plan, they would
2 obviously have to seek approval of this Court, and obviously
3 if any artifacts that are under the jurisdiction of this
4 Court were involved in anything, they would have to get the
5 approval of the Court.

6 MR. PORTER: Right. My understanding from our last
7 hearing last June, I believe it was, is, of course, any of
8 the STAC, the American artifacts, would have to come to this
9 Court for approval, and at least with regard to the French
10 artifacts, even though the Court does not have jurisdiction,
11 they would bring that issue to the Court before any transfer
12 so that we could address any concerns that NOAA may have.

13 THE COURT: Didn't the bankruptcy court rule that
14 France has no interest in the artifacts recovered?

15 MR. PORTER: They did, yes.

16 THE COURT: That's been a ruling by the bankruptcy
17 court?

18 MR. PORTER: It did.

19 THE COURT: So what is the status of those
20 artifacts? They would be under the auspices of this Court?

21 MR. PORTER: Well, as we pointed out in our motion
22 or our response of the periodic report last year, we think
23 there is at least some consideration in the CNCs that the
24 Court has personal jurisdiction over the company as to their
25 treatment of the entire artifact collection.

1 But until, quite frankly, a proposal is put before
2 us to evaluate, we can't really assess what they're doing,
3 if there is a sale of five artifacts or a sale of the entire
4 collection.

5 THE COURT: I'm going to have this letter marked as
6 Hearing Exhibit Number 1.

7 (The document was received in evidence as Hearing
8 Exhibit No. 1.)

9 MR. PORTER: The only other issue I would bring up
10 on the bankruptcy, before I turn it over to Mr. Troy for any
11 questions Your Honor may have, is we are aware -- this is
12 fairly recent, just two days ago, there was a motion filed
13 in the bankruptcy court by one of the creditors to appoint a
14 Chapter 11 trustee. That is obviously very new, and I do
15 have a copy of that for the Court if you would like.

16 THE COURT: All right. A copy for Mr. McFarland,
17 and there is no objection, I will mark this as Hearing
18 Exhibit Number 2.

19 (The document was received in evidence as Hearing
20 Exhibit No. 2.)

21 MR. PORTER: With that, Your Honor, I'd be happy to
22 turn it over to Mr. Troy if you have any specific questions
23 on the commerce NOAA side of things in the bankruptcy
24 proceeding.

25 THE COURT: I'll ask my next question to Mr. Troy

1 since he is apparently more of the bankruptcy expert, so to
2 speak.

3 MR. PORTER: Indeed, yes, Your Honor.

4 THE COURT: All right, Mr. Troy. Before you
5 proceed, let me ask you the question that's on my mind.
6 What do you see as the implications of the appointment of a
7 Chapter 11 trustee?

8 MR. TROY: Thank you, Your Honor, for letting me
9 appear. Matthew Troy, civil division, Department of Justice
10 on behalf of NOAA. I will give you my bankruptcy answer as
11 a bankruptcy practitioner. Chapter 11 trustee, if
12 appointed, is selected from a panel of trustees maintained
13 by the U.S. Trustee for that particular district. That
14 person is appointed, and, in effect, in layman's terms,
15 becomes management for the company, runs the company.

16 The creditor that has filed this motion in its
17 pleadings is pressing for, and I'm not sure that -- I'm just
18 reflecting what its position is as stated in the papers, is
19 pressing for a sale of the French artifacts and wants a
20 third-party objective, court-appointed trustee to pursue
21 that course.

22 Whether or not the trustee actually pursues that
23 course will be up to the trustee once and if -- and that's a
24 big if as well -- a trustee gets appointed, will make an
25 assessment on their own on what the proper course or action

1 is and how to resolve the bankruptcy.

2 THE COURT: All right. Thank you. You can go
3 ahead.

4 MR. TROY: The only other thing I was going to add,
5 Your Honor, it sounded like you had a question about how did
6 any type of sale of any of the artifacts interact with this
7 Court and your jurisdiction. I just wanted to point out and
8 make clear that in the order approving the planned support
9 agreement that we requested insertion of language to the
10 order that the debtors agreed to, R.M.S.T. agreed to that
11 said that any sale of the American artifact collection is
12 expressly conditioned upon entry of an order from this
13 Court, the United States District Court for the Eastern
14 District of Virginia, approving such sale, consistent with
15 the covenants and conditions applicable to such artifacts.

16 So in the sense there is a carve-out here for your
17 role in any sale of the American artifacts.

18 THE COURT: All right.

19 MR. TROY: That was all I had, Your Honor, unless
20 you had any other questions.

21 THE COURT: Well, what do you see, and then I know
22 this is like asking somebody a pie in the sky question, but
23 what do you see as the optimal outcome of this bankruptcy
24 proceeding and what do you see as the practical outcome of
25 it, if you can project either one of those at this point?

1 MR. TROY: Well, I think from all parties'
2 perspectives an optimal outcome is that creditors get paid
3 in full, and the company is able to find a transaction,
4 either through a stock sale, an artifact sale, that complies
5 with the covenants and conditions and satisfies Your Honor
6 that such a transaction complies with the covenants and
7 conditions, and that going forward we have a healthy, viable
8 company that can take care of, properly curate these
9 artifacts in accordance with the covenants and conditions.

10 THE COURT: All right.

11 MR. TROY: Practically, that's pretty hard, Your
12 Honor. I think that's what the debtor probably has
13 struggled with for two years in bankruptcy. We are not a
14 creditor in the case. We are exercising our role through
15 this Court and the covenants and conditions to make sure
16 that what happens in the bankruptcy does not run afoul of
17 the covenants and conditions. So our knowledge, our
18 intimate knowledge of what is actually going on behind the
19 scenes is fairly limited, and what I'm referring to is the
20 actual sale efforts.

21 THE COURT: You also have a role, remember, the
22 treaty and the agreement that was entered into. So the
23 United States, that's how you were brought in initially. I
24 mean, you have a role representing the United States and the
25 interest of the United States, as well as following through

1 the continuum. I won't go back through all of it when
2 Mr. Leonard, who's now a magistrate judge with the court,
3 all of the hearings and all of the roles of the United
4 States, and then I think Mr. Porter may be third round.
5 Wasn't Ms. Watt in there for a while, and then Ms. Watt
6 left, and then there was Mr. Leonard? Now there's
7 Mr. Porter, and I'm still around.

8 MR. TROY: Thankfully.

9 THE COURT: Thank you, Mr. Troy.

10 MR. TROY: Thank you, Your Honor.

11 THE COURT: All right. I do have a question for
12 you, Mr. McFarland.

13 MR. McFARLAND: Thank you, Your Honor, and I did
14 want to make a couple of points.

15 THE COURT: Go ahead.

16 MR. McFARLAND: Let me take the Court's questions.

17 THE COURT: Go ahead. Make your points.

18 MR. McFARLAND: Well, I think one is the company
19 has always recognized and acknowledged that a sale of the
20 American artifacts would require this Court's approval. So
21 when the term carve-out was used, that isn't the term we
22 would call. We acknowledge that. I think the French
23 artifacts is different, and I have not had a chance to study
24 what was filed either two days ago or yesterday. I have
25 learned of it. I will say that as I understand it, it is

1 largely a contention that the French artifacts should be
2 sold individually and that should have been carried out. So
3 the company will review this and respond in time, Your
4 Honor.

5 The other thing I wanted to say is, in terms of
6 keeping the government and NOAA involved, which we always
7 have done here and had good communications, we actually have
8 recently offered them a non-disclosure agreement whereby
9 they would get further details about what is going on in
10 terms of potential sales or bidders, and to date they have
11 not agreed to execute an NDA. So, obviously, we can't share
12 but so much with them. But we have offered that, and I
13 wanted the Court to be aware of that.

14 THE COURT: Well, that leads me into my next
15 question, which, obviously, you are not going to give the
16 Court and NOAA but so much information on this. What have
17 you been doing to market and sell this idea because to me,
18 and I realize that, and I'll express whatever bias I may
19 have here after having been with this case for numerous
20 years, that it is such a valuable and unique collection and
21 opportunity for any museum or someone who wants to make a
22 contribution, a lasting eternal contribution to history.
23 I'm talking about people that obviously have financial means
24 and are looking for some way to contribute to the history of
25 the world, really, that it would seem to me, this is an

1 attractive offer and to, as I say, a museum or a collector
2 or someone who wants to contribute.

3 I just hope that you all are exercising strenuous
4 marketing or reaching out, or whatever you're doing, to make
5 this happen because to me that's the most important thing at
6 this juncture.

7 MR. McFARLAND: Yes, Your Honor. We fully agree
8 with you. Let me say this. Because R.M.S.T. is publicly
9 traded and because of FCC requirements, we cannot even
10 disclose people who are interested publicly. We will
11 provide the Court further details under seal and are happy
12 to do that.

13 In fact, one of the things I was going to ask,
14 which is, I know, not the usual modus operandi of the Court,
15 but we are hoping that there can be a resolution in short
16 order. It would be very helpful for us to know if we could
17 be on the Court's schedule in about six weeks or seven weeks
18 or eight weeks or something in that range. I acknowledge
19 that normally we don't set hearings in this court before
20 things are briefed and presented, but it would be very
21 helpful to my client if we could have an idea of, yes, the
22 Court could hear you in the week of --

23 THE COURT: My schedule, I know, is open in August.
24 I don't have any plans to be away, and I would tell you that
25 May, June and July are just jammed but that August is fairly

1 open. I'm sure Ms. Cherry will, after this hearing, be glad
2 to give you a date, and if for some reason you need to
3 cancel it, it can be removed from the docket in a timely
4 manner.

5 MR. McFARLAND: Thank you, Your Honor. We would
6 appreciate that. I think I could say for my client we would
7 like to be back here this summer.

8 THE COURT: Well, let's put that on. Of course,
9 set the date with the attorneys from NOAA and the United
10 States and Mr. Troy, if it looks like it may be necessary
11 for him to be here. I don't know what all this involves,
12 and certainly if there's information the Court needs in
13 advance of the hearing, you should file it under seal, if
14 you don't feel it is something that should be public, but
15 I'd like to be prepared for any hearing.

16 MR. McFARLAND: Absolutely, Your Honor. We will
17 make sure for the hearing, and I think there probably would
18 be things that would need to be under seal. There are
19 certain things going on right now, Your Honor, but I can't
20 publicly discuss them. We will certainly be happy to
21 provide to the Court, under seal, information. As I said,
22 we have offered that to the government through an NDA, and
23 that's their decision.

24 THE COURT: That's their decision.

25 MR. McFARLAND: Exactly.

1 THE COURT: I understand. Maybe they feel like as
2 representing the United States and the public it's not
3 appropriate to have the information. I don't know what
4 their reasons are, but that's their decision.

5 MR. McFARLAND: Absolutely.

6 THE COURT: Thank you. Was that everything on this
7 one?

8 MR. McFARLAND: That is everything I've got, Your
9 Honor.

10 THE COURT: I'll move to the next point in a
11 minute. I wanted to just mention the date to Ms. Cherry.

12 If there is nothing more today on the bankruptcy,
13 I'd like to hear a report on this Ocean Gate expedition,
14 Mr. McFarland.

15 MR. McFARLAND: We became aware of the Ocean Gate
16 expedition and advised the Court what we knew and what was
17 available publicly. It is our understanding, as of
18 currently, that they are trying to go forward with dives,
19 bringing tourists down. I think they were testing a
20 submersible, is the last I read, that was publicly
21 disclosed, and they were doing tests in, I believe it was
22 the Bahamas this month.

23 THE COURT: The waters at the Titanic are a lot
24 chillier, and the tides and the current could be a lot more
25 dangerous. But I don't know that the Bahamas is, from my

1 knowledge of this case and the tides and the currents and
2 the movements that I've looked at over the years, that
3 that's necessarily a compatible environment, but that's not
4 up to us.

5 MR. McFARLAND: No, Your Honor. And far be it for
6 me to advise someone who is -- yes.

7 THE COURT: Let me ask you this: I have not gone
8 on the Internet or done any independent research on Ocean
9 Gate. Who comprises the entity? How long have they been
10 around? What is the background on them that you have been
11 able to determine?

12 MR. McFARLAND: I think there are some people with
13 some means, and then there is some folks who I think have
14 some definite experience in this area, and Mr. Wainger may
15 be able to provide more detail on that.

16 I think it's Mr. Gallo, who the Court may recall
17 from this proceeding, is at least familiar with the
18 gentleman and may be advising them who were looking to do
19 these dives.

20 THE COURT: Well, in one of the reports, I think it
21 was the February 6th periodic report, you indicated that
22 they were advertising and selling tickets and that they were
23 planning something in June of 2018. Is that still a
24 projected date?

25 MR. McFARLAND: The last time I looked at the

1 website they were still testing the submersible. So whether
2 they are going to meet that timeline in terms of June 2018,
3 I don't know and wouldn't be able to comment specifically.
4 I know given that today is May 3rd, and at least the most
5 public -- the last public announcement they were still not
6 saying that we are going forward with dives in these dates.
7 The Court knows the window to do this is somewhat limited
8 once you get into certain months, it's really not feasible
9 because of weather and conditions.

10 THE COURT: Is this a private limited liability
11 company? I assume it's not a public company.

12 MR. McFARLAND: I don't believe it's a public
13 company, Your Honor. I think they are, at least for U.S.
14 base, I believe it is the State of Washington, Seattle, so
15 they're not on our coast.

16 THE COURT: Well, that's where they've
17 incorporated.

18 MR. McFARLAND: Yes.

19 THE COURT: These tickets, you say they are selling
20 tickets. Has anybody looked at a ticket? What does it say
21 you're entitled to? How much are the tickets? What does
22 the ticket say? Does it have an expiration date? Does it
23 have a specific dive date? I think the tickets, which are
24 being offered to the public, may be the most revealing fact
25 as to whether it's going to go forward, if somebody's paid

1 money for a ticket. How much are they selling it for?

2 Mr. Wainger looks like he has information.

3 MR. McFARLAND: He can provide the details.

4 MR. WAINGER: Some detail but not everything, Your
5 Honor. Good morning.

6 THE COURT: Good morning.

7 MR. WAINGER: We understand that it is over
8 \$100,000 per opportunity or per ticket and that they have at
9 least 50, is what they have publicized, passengers who
10 intend to go down to the bottom of the wreck. That's the
11 information we have right now, Judge.

12 THE COURT: All right. What are the means to
13 monitor this?

14 MR. WAINGER: That's a great question, Judge. I
15 don't have the answer there. To monitor?

16 THE COURT: Well, to monitor what they are doing
17 and whether they are going to go forward with something down
18 to the wreck.

19 MR. WAINGER: What they intend to do is to go down
20 multiple times to show the wreck off, to use sonar, to take
21 video. In terms of monitoring them, we don't have the
22 capacity to monitor them. I don't know that NOAA had the
23 capacity to monitor them. So what we are stuck with is
24 relying on what they publicize that they are going to do.

25 One of our great concerns is that they don't have

1 the expertise. We don't have the ability to monitor them,
2 and that they will do things intentionally or
3 unintentionally that could damage the wreck site, from
4 dropping substantial amounts of ballast, to potentially
5 recovering artifacts, although they've never made any claims
6 that they intend to recover artifacts.

7 But we are concerned about their ability to pilot
8 this in a professional manner. As the Court, I believe,
9 knows, it is very dangerous, and the currents are very
10 strong down there, and we are concerned that the submersible
11 could be led unintentionally into the wreck site, and there
12 really is no great way to monitor what's going on down
13 there.

14 THE COURT: When I said monitor, I'm referring to
15 three different aspects here: Have they been made aware
16 that this court has jurisdiction over the salvage
17 operations; that R.M.S.T. has been declared
18 salvor-in-possession; and that any violation of that will be
19 reported to the Court for appropriate action?

20 In other words, it's one thing to send a
21 submersible down if all it is going to do is go down. But
22 knowing the currents and so forth, there could be some
23 repercussions from just sending a submersible down. So I
24 don't know that anyone can prevent someone going down.

25 On the other hand, if it damages the wreck site or

1 the artifacts or interferes with future salvage operations,
2 there is jurisdiction there. So the first thing is I think
3 they need to have notice and with a copy of that letter to
4 the Court and the United States.

5 So, in other words, I think that they need to be
6 put on written notice that this is still an ongoing salvage
7 case in this court over which, however you word it, so that
8 they can't say, well, we didn't realize that. I think
9 that's the first thing, you put somebody on notice.

10 Then in that letter you should probably request,
11 and you might not get it, if you do schedule any activity to
12 the wreck site, you need to notify R.M.S.T., the Court, and
13 the United States. Sometimes just telling somebody they
14 need to do something, and I can decide whether to follow up
15 with correspondence to them or not once I see what you've
16 done.

17 Number three, if there is any indication, there may
18 be something on websites that they're going down. Now, I'm
19 beginning to think out of the box here, I'm going to tell
20 you. I do not know that the Court would have the legal
21 capacity, or the physical capacity, and I don't know that
22 I'd have any marshals that wanted to do it. But there can
23 be marshals monitoring to prevent a violation of a court
24 order.

25 When you have a ship attachment, and the Court has

1 attached the ship, you send the marshals to be sure that
2 that ship doesn't leave port. Now, I don't know that there
3 are the resources to send United States Marshals to those
4 waters, or whether it's safe, but I'm saying the Court is
5 not without resources. I know that the United States, NOAA
6 people can't just get up and circle around in a boat. I
7 know that R.M.S.T. can't, but there may be jurisdiction.
8 There are certain nationwide procedures. For instance, the
9 marshals from Maine we used in another case, and we had to
10 use a marshal service in Florida on the Columbus America
11 case.

12 In other words, I'm not saying it's possible.
13 Again, I'm thinking out of the box on this one, but there
14 could be ways to prevent, if someone is going to openly, or
15 is in the process of openly violating a Court's jurisdiction
16 and order. But I think at a threshold level they need to be
17 put on notice of the parameters, and that they need to
18 notify you and the Court if they actually are planning any
19 type of expedition to send down submersibles. I don't know
20 that it will ever happen because it's certainly not an easy
21 thing to do. But I think they've got to be put on some kind
22 of notice.

23 MR. PORTER: Your Honor, I may be able to help
24 close a little bit of that circle for you.

25 THE COURT: All right.

1 MR. PORTER: It doesn't close it all the way but
2 somewhat. As you recall, one of the issues we've discussed
3 in the past is this new Section 113 and what it does. There
4 have actually been multiple conversations between NOAA and
5 Ocean Gate over the last several months, Ms. Roller and
6 Mr. Alberg, advising them under 113 of their obligation to
7 submit a project plan to NOAA.

8 They have also been told in writing via e-mail,
9 they have been told, recommended that they notify R.M.S.T.
10 of any plan, as well as this Court. Now, I will say that
11 they have indicated they are not planning to notify R.M.S.T.
12 They have not said anything about notifying the Court.

13 At this juncture, NOAA has received information,
14 some information from Ocean Gate about plans. There is no
15 specific date that has been provided. We, NOAA, has asked
16 for information that would be consistent with what is in the
17 annex to the international agreement, which is also
18 consistent with the NOAA guidelines about the plan, the
19 scope of the plan, the key players. We don't have all of
20 that information. We do have some information, and that is
21 being evaluated.

22 Ocean Gate has been expressly told by NOAA of the
23 Court's jurisdiction, has been expressly told that R.M.S.T.
24 has salvage rights. So they know those things. The
25 information that we now have is being evaluated. Right now,

1 and I believe either Rob or Brian alluded to this, right now
2 our information is not beyond dive and view and photograph,
3 so we are not aware of something beyond that.

4 As Your Honor knows, and I wish the process were a
5 little further along as to how 113 is delegated. That
6 decision has not been entirely made, but it is certainly our
7 expectation from NOAA, with the caveat that it hasn't been
8 fully delegated to them, to implement 113, that any request,
9 any request that impinged on the salvage rights of R.M.S.T.,
10 we would advise the Court, and any request that did that, we
11 would condition any issuance of an authorization on further
12 review and consent by this Court. So I think that closes a
13 little bit, not all the way, but that may help the Court
14 somewhat.

15 THE COURT: Let me suggest two things, and I'll get
16 your reaction to it, Mr. Porter, and then you, Mr. Wainger.
17 Number one, I still think it would be helpful or beneficial
18 and a protective measure for R.M.S.T. to go ahead and write
19 the letter so that no one can claim they sat on their
20 rights. In other words, you don't want any claim, well,
21 they knew about us, there was a court hearing, it was
22 discussed, and they never contacted us.

23 So I think it's important that R.M.S.T. issue that
24 letter to remind them that they are the
25 salvor-in-possession, that the Court has jurisdiction over

1 all salvage operations with the Titanic, and that if there
2 is any expedition, they would expect notification to
3 R.M.S.T. and the Court. Then on that letter specifically
4 copy me and copy Mr. Porter so that they know that we are
5 all on the same page with being aware of what they're doing.
6 So I do think that letter is important, number one.

7 Number two, if you're comfortable, I think at least
8 the e-mail that you sent to them should probably come to the
9 Court and to R.M.S.T. so that we could make that exhibit
10 Court Exhibit 3 here. If you don't have it today, you can
11 send it in and give the R.M.S.T. counsel a copy of it so
12 that, again, it shows that we are all on the same page. We
13 are not trying to exercise jurisdiction we don't have, on
14 the one hand. On the other hand, we are not going to stand
15 by and let them disturb the wreck site and the artifacts and
16 so forth.

17 MR. PORTER: We can file that as an attachment to a
18 notice later today.

19 THE COURT: That would be great. So we will have
20 the e-mail, and we will have the letter from R.M.S.T. Then
21 whatever your review is, if you are comfortable sharing it
22 with the Court and/or R.M.S.T., you can do that. But
23 certainly, Mr. Porter, if NOAA receives any kind of
24 indication that there's going to be activity, you should
25 call it to the attention of the Court. I will make myself

1 available. I have no plans to be anywhere for the rest of
2 the year except here. So you can make us aware of it so
3 that we can determine if action is needed.

4 MR. PORTER: We will certainly do that, Your Honor.

5 THE COURT: I think that then closes some of this,
6 at least the letter from R.M.S.T., the e-mail notice from
7 NOAA, and with the understanding that if NOAA reaches some
8 kind of conclusion that they think is appropriate for the
9 Court and R.M.S.T. to have, they will pass that on after
10 review of the documents.

11 In the meantime, if they get any type of definitive
12 word that they are just going down there with a submersible,
13 it would be nice to bring them before the Court and have
14 them make a representation to the Court, with you all
15 present, that their plans are limited to this. Because they
16 would send an attorney, and an attorney is an officer of the
17 Court, and then you'd have that representation on record
18 before the Court that these are our plans and this is what
19 we are going to do.

20 I'm not saying anybody would prevent them, depends
21 upon what their plan is, but they would have to stand before
22 a Court, say this is what we are going to do, and, of
23 course, the Court is going to ask them for a written plan of
24 what they are going to do, and everybody would have that.

25 MR. WAINGER: We certainly appreciate those

1 suggestions, Your Honor, and directions, and we will comply
2 and try to get that letter out immediately.

3 The one thing I wanted to add very briefly, and
4 this gets a little bit tricky, but the company is concerned
5 about enforcing its rights, and the government is concerned
6 about making sure that no one steps on R.M.S.T.'s rights,
7 but also that it comply with what it perceives to be its
8 obligations under Section 113.

9 For the record, R.M.S.T. doesn't believe that 113
10 is enforceable or constitutional, but we haven't taken any
11 action on that yet. But I want to make sure that the Court
12 is aware that there are varying positions with respect to
13 the enforceability of that provision.

14 THE COURT: I understand, but let's for now say we
15 are all on the same page to protect the wreck site and the
16 artifacts.

17 MR. WAINGER: Absolutely.

18 THE COURT: So for right now, regardless of your
19 legal positions on 113, we are all on the same page for this
20 one.

21 MR. WAINGER: Understood.

22 THE COURT: All right. I think that brings us to
23 the third issue that I'm not sure there is anything
24 anybody's going to be able to do. Mr. George Tulloch, when
25 he was president of R.M.S.T., wrote this nice letter to

1 Mr. Harris, passed on four artifacts; three from the 1987
2 expedition and one from the 1994 expedition; and in the
3 meantime Mr. Harris has pledged them as collateral in a
4 commercial transaction with Packwood Investments, LLC.

5 Do you have any information on that or anything
6 that you think we can do?

7 MR. McFARLAND: The only further information I
8 have, Your Honor, is that I think the artifacts are
9 presently with an escrow agent and that there was a dispute
10 between Mr. Harris and his creditor as to whether he really
11 owes the obligation. We have put them on notice of our
12 position and that we would get notice of anything that would
13 cause for a transfer of those artifacts, title of those
14 artifacts, we would get notice and certainly advise the
15 Court and also look at what means we could take and should
16 take given all the circumstances.

17 THE COURT: You all may or may not know this, but
18 what would be the relative valuations in today's terms? I
19 don't really know. I have listened to the valuations. But
20 we've got a 1912 gold coin, we've got a 1902 \$5 U.S. bank
21 note, we have a \$5 U.S. legal tender, and a one 8-pound
22 piece of coal. I know the coal's been shipped away before
23 and sold.

24 MR. WAINGER: We haven't looked at the appraisal of
25 the coal, Judge, because we think that's negligible because

1 so much has been sold. We did look at the three artifacts
2 and relied on Richard Raymond Alasko's report and spoke to
3 Mr. Alasko to get an idea. At the low end, those three
4 artifacts collectively could be worth 10 to \$15,000,
5 according to Mr. Alasko. At the high end, perhaps 120 to
6 \$150,000 collectively.

7 THE COURT: All right. Thank you. Well, then I
8 will conclude this segment by being satisfied that R.M.S.T.
9 at least is aware of the situation with Mr. Harris and
10 Packwood Investments and will monitor it as best we can.

11 Is there anything, Mr. Porter, Ms. Rolleri?

12 MR. PORTER: Nothing on that, Your Honor. The
13 three pieces of currency, though, are French artifacts, if
14 that has any distinction.

15 THE COURT: We are trying to hold on to everything
16 we can, right?

17 MR. PORTER: We agree, yes.

18 THE COURT: Not we meaning the Court, but you all
19 in terms of value.

20 MR. PORTER: I'm sorry. One other point on this.
21 On the three-pieces of currency, as Your Honor knows, NOAA
22 has in the past tracked inventories. Only one of those
23 pieces of currency was on the inventory. I'm not suggesting
24 that there is an overall issue as you recall from the report
25 that Mr. Alberg prepared during the site visit. Overall the

1 management and the documentation is well in order, but we
2 did notice in checking that it appeared that only one of
3 them was on the original inventories.

4 That is a matter I don't believe the Court needs to
5 be immediately addressing. We can address directly with
6 R.M.S.T. Just wanted to bring that to your attention.

7 THE COURT: Also, remember they went out in 1997,
8 Mr. Tulloch. I don't keep the dates tracked in my mind of
9 when they started cataloging, but I do note that these went
10 out on August 15th, 1997 from Mr. Tulloch to Mr. Harris,
11 also known as Mikey.

12 That brings us to the last aspect of the Court's
13 concerns or the matters that needed to be addressed, and
14 that was if there are any 2018 expeditions planned? Since
15 our last hearing, and your September 7th, 2017 report, there
16 was a letter of intent with STI to partner on an expedition
17 to the wreck site in 2018, and if you could update the Court
18 as to what is the status of that letter of intent, number
19 one; and, number two, if there is anything other than that
20 letter of intent with any other entity?

21 MR. McFARLAND: Your Honor, the company carefully
22 considered a possible expedition in 2018, including the
23 letter of intent that Your Honor mentioned. That is not
24 going forward, and at this point in time, given where the
25 company is in the bankruptcy proceedings, we need to get

1 through the Chapter 11 reorganization before there would be
2 an expedition this year.

3 THE COURT: All right. Mr. Wainger, Mr. McFarland,
4 is there anything further you want to advise the Court of or
5 discuss this morning?

6 MR. McFARLAND: Just one point, if I may, Your
7 Honor. Obviously, the artifacts are always a tremendous
8 consideration for this Court so I did want to say that even
9 with the Chapter 11 proceedings going on, Mrs. Klingelhofer
10 and her staff continue to maintain, carry, curate and
11 conserve the artifacts in the same fashion that they always
12 have, meticulous and to standards, and above and beyond the
13 standards, but I did want to assure the Court that we
14 recognize and still are adhering to our obligations in that
15 respect.

16 THE COURT: Thank you.

17 Then, Mr. Porter, Ms. Rolleri, Mr. Troy, is there
18 anything further you want to advise the Court of this
19 morning?

20 MR. PORTER: Nothing further from NOAA, Your Honor.
21 Thank you.

22 THE COURT: Thank you, counsel. If you will set a
23 date in August, and if you need any type of hearing or
24 matter heard between now and then, just notify the Court,
25 and we will make appropriate arrangements.

1 Have a good weekend. The Court stands in recess
2 until this afternoon.

3 (Hearing adjourned at 11:52 a.m.)

4 CERTIFICATION

5
6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.
8

9
10 X _____/s/_____ x

11 Jody A. Stewart

12 X _____5-3-2018 _____ x

13 Date
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JODY A. STEWART, Official Court Reporter